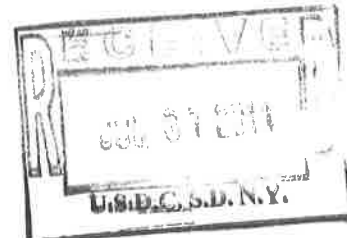


14 CV 5998

UNITED STATES DISTRICT COURT
SOUTHERN DISTRICT OF NEW YORK

-----x
ABIGAIL STRUBEL,)
individually and on behalf of)
all others similarly situated,)
)
Plaintiff,)
)
- against -)
)
CAPITAL ONE BANK (USA), N.A.,)
)
Defendant.)
-----x



No.

CLASS ACTION

JURY DEMANDED

COMPLAINT

1. This action seeks redress for the illegal practices of Capital One Bank, for providing to customers of its VentureOne card accounts disclosures that violated the Truth in Lending Act ("TILA").

2. As alleged in greater detail below, Capital One Bank ("Capital One" or "Bank"), failed to furnish accurate disclosures in the manner mandated by the statutory provisions of TILA and by the corresponding federal regulations governing disclosures furnished in connection with new credit card account applications. More specifically, the Bank failed to furnish the key terms in a summary table in the manner required by the Consumer Financial Protection Bureau, the agency to which Congress delegated the authority to set standards for credit card applications.

RECEIVED
JUL 31 2014
U.S.D.C.S.D.N.Y.

3. TILA's purpose is to assure meaningful disclosure of credit terms in order to (i) allow consumers to compare more readily the various credit terms available; (ii) enable consumers to avoid the uninformed use of credit; and (iii) protect consumers against inaccurate and unfair billing practices. 15 U.S.C. § 1601(a). The Bank's conduct violates the express provisions of the TILA and the applicable Regulations.

4. Under the private enforcement provisions of TILA, plaintiff and the proposed class seek the recovery of statutory damages of up to \$1 million with respect to each of the Bank's failures to comply.

Jurisdiction and Venue

5. This Court has subject matter jurisdiction under 28 U.S.C. §§ 1331 and 1337, as well as under 15 U.S.C. § 1640(e), because this action arises under TILA, 15 U.S.C. § 1601 *et seq.*

6. Venue is proper because the acts and transactions that give rise to this action occurred, in substantial part, in this district. Venue is also proper in this district because the Bank transacts business in this district and the interests of justice require maintenance of this action in this district.

Parties

7. Plaintiff Abigail Strubel resides in New York, New York, which is within this district.

8. Strubel is a “consumer,” as that term is defined by § 1602(h) of TILA, because this complaint arises from the Bank’s offer and extension of credit to Strubel, a credit card holder, for personal, family or household purposes.

9. Upon information and belief, Defendant Capital One Bank is doing business in the State of New York and throughout the United States, with a principal place of business in Virginia.

10. The Bank is a “creditor,” as that term is defined by § 1602(f) of TILA and Regulation Z (“Regulation Z”), 12 C.F.R. § 1026.2(a)(17) and 12 C.F.R. §1026.2(a)(17), because at all relevant times, the Bank, in the ordinary course of its business, regularly – *i.e.*, more than 25 times a year – extended or offered to extend consumer credit for which a finance charge is or may be imposed, which is payable in more than four installments.

Factual Allegations

11. Strubel is the holder of a VentureOne Card account issued by the Bank generally intended for the purchase of goods or services or the procurement of cash advances.

12. Upon information and belief, Strubel received in the mail the Bank’s invitation to apply for a VentureOne card, together with a summary table of disclosures, on or about August 7, 2013. See Exhibit A.

13. Upon information and belief, Strubel completed the Bank's credit card application and mailed it on or about August 8, 2013.

14. On or about August 19, 2013, the Bank advised Strubel via e-mail that her application had been approved and that she would be receiving her VentureOne card in the mail.

15. On or about September 1, 2013, Strubel received her VentureOne card from Capital One.

16. On or about September 3, 2013, Strubel made her first purchase with the VentureOne card.

17. All class members herein, as defined below, completed VentureOne applications received in the mail with a due date of September 13, 2013, were approved by the Bank, and subsequently made a credit transaction using that account.

Class Allegations

18. Strubel brings this action individually and on behalf of all persons similarly situated.

19. The proposed class (the "Class") consists of all persons who received in the mail a credit offer and application with a response date of September 13, 2013, opened a VentureOne account and, according to the Bank's records, (i) made an initial purchase on that account one year before the filing date of this action, or later; and (ii) and were furnished, before that purchase was made, credit application

disclosures in a tabular format with text substantially similar in size and appearance to the text in Exhibit A.

20. Specifically excluded from this class are the Bank, any entity in which the Bank has a controlling interest, and the officers, directors, affiliates, legal representatives, heirs, successors, subsidiaries or assigns of any such individual or entity.

21. The members of the class for whose benefit this action is brought is so numerous that joinder of all Class members is not practicable. In light of the tens of thousands of credit cards issued by the Bank every year, the number of class members is believed to be in excess of 1,000 persons.

22. Plaintiff's claims are typical of, if not identical to, all members of the class and Plaintiff does not have any interest that is adverse or antagonistic to the interests of the class. If the conduct of the Bank violates TILA as applied to Plaintiff, then it violates TILA with respect to the Class.

23. Plaintiff will fairly and adequately protect the interests of the Class as she is committed to the vigorous prosecution of this action and, to that end, has retained competent counsel experienced in complex litigation of this nature.

24. The Class is proper for certification under Rule 23(b)(2) of the Federal Rules of Civil Procedure. The Defendant's actions complained of herein are generally applicable to all Class members, thereby making final injunctive relief appropriate with respect to the class as a whole.

25. The class is also proper for certification under Federal Rule of Civil Procedure 23(b)(3). A class action is superior to other available methods for the fair and efficient adjudication of the claims asserted herein. Because damages suffered by individual class members may be relatively small, the expense and burden of individual litigation make it impracticable for the class to seek redress individually for the wrongs they have suffered. Members of the Class do not have a particular interest in individually controlling the prosecution of separate actions.

26. There are questions of law and fact which are common to the members of the Class and which predominate over questions affecting only individual members. Common questions of law and fact include, but are not limited to, whether the Bank has a standardized procedure by which it fails, on credit application it furnishes, to make the disclosure of a prospective credit customer's terms in a manner compliant with TILA and Regulation Z.

27. Upon information and belief, the Class consists of thousands of customers.

28. Thus, a class action is an appropriate and superior method for the fair and efficient adjudication of the present controversy given the following factors:

- a) Common questions of law and/or fact predominate over any individual questions which may arise and, accordingly, there would accrue enormous savings to both the Court and the Class in litigating the common issues on a class-wide instead of a repetitive individual basis; and
- b) The aggregate volume of the individual class members' claims, coupled with the economies of scale inherent in litigating similar claims on a common basis, will enable this case to be litigated as a class action on a

cost-effective basis, especially when compared with repetitive individual litigation.

29. Class certification is also fair and efficient because prosecution of separate actions by individual Class members would create a risk of differing adjudications with respect to such individual members of the Class, which as a practical matter may be dispositive of the interests of other members not parties to the adjudication, or substantially impede their ability to protect their interests. Moreover, since the actual monetary damages suffered by, or statutory damages available to, individual Class members may be relatively small, although significant in the aggregate, the expenses and burdens of individual litigation make it impossible or effectively impossible for the members of the Class to seek individual redress for the TILA violations committed by Defendant.

30. Plaintiff anticipates that there will be no difficulty in the management of this litigation. The records of the individuals encompassed within the Class are in Defendant's possession.

COUNT I

Violations of the Truth in Lending Act

31. Plaintiff repeats and re-alleges each and every allegation contained in the foregoing paragraphs with the same force and effect as though fully set forth herein.

32. Congress authorized the Federal Reserve Board ("FRB" or "Board") to promulgate regulations granting it broad authority to effectuate the purposes of

TILA; that authority is now delegated to the Bureau of Consumer Financial Protection (“Bureau”). 15 U.S.C. §1604(a)(2008); 15 U.S.C. §1604(a).

33. The set of regulations that the FRB promulgated to implement TILA is known as Regulation Z, 12 C.F.R. §226.1 *et seq.*;

34. To reflect its assumption of TILA rulemaking authority as of July 21, 2011, the Bureau issued an interim final rule republishing Regulation Z with only minor changes that did not impose any new substantive obligations on creditors. 76 FR 79768 (Dec. 22, 2011); 12 C.F.R. §1026.1 *et seq.*

35. TILA requires the creditor to provide an array of disclosures on applications for credit furnished to consumers, “clearly and conspicuously” and in accordance with regulations prescribed by the Bureau as to their form and manner. 15 U.S.C. §§ 1637(c)(1)(A), 1637(c)(1)(B), 1632(c).

36. The Bureau’s Regulations implementing § 1637(c)(1)(A) require that creditors furnishing applications to prospective credit consumers (i) highlight (*i.e.*, place in bold type) generally each annual percentage rate (APR) and fee amount; and (ii) make the Purchases APR disclosure using a highlighted font in 16-point or larger. 12 C.F.R. Part 1026 Supp. I, Comment 60(a)(2)-5; 12 C.F.R. § 1026.60(b)(1).

37. Further, the Bureau’s Regulations implementing §§ 1637(c)(1)(A) and 1637(c)(1)(B) require that creditors furnishing applications to prospective credit consumers make all required disclosures, other than the Purchases APR, in a “readable font style and font size (10-point Arial font style...)” and “not compressed

to appear smaller than 10-point type.” 12 C.F.R. 1026 Supp. I, Appendix G, Comment 5-v.

38. The Bureau specifies that the formatting prescriptions with respect to font size are requirements, and not merely guidance regarding readability. 12 C.F.R. Part 1026 Supp. I, Appendix G, Comments 5-v and 5-vi.

39. The Bank’s application disclosures provided to Strubel (Exhibit A) were not compliant with Regulation Z and TILA in that (i) the highlighted Purchases APR figure was printed in a compressed font that was, or appeared to be, in a size less than 16-point; (ii) the other highlighted percentage and dollar figures were printed in a compressed font that was, or appeared to be, in a size less than 10-point; and (iii) the non-highlighted text was printed in a compressed font that was, or appeared to be, in a size less than 10-point.

40. Because they did not receive a proper disclosure of the terms of the VentureOne account within the credit application, Plaintiff and the Class were injured.

41. With respect to each of the Bank’s violations of TILA for inaccurate disclosures, as alleged above, Plaintiff and the Class are entitled to recover up to \$1,000,000 in statutory damages, together with costs and reasonable attorney fees. 15 U.S.C. § 1640(a)(2).

WHEREFORE, Plaintiff Abigail Strubel prays on her behalf and on behalf of the Class that judgment be entered against Defendant as follows:

(1) An order certifying the proposed Class under Federal Rule of Civil Procedure 23(b)(2) and, additionally or in the alternative, an order certifying the Class under Federal Rule of Civil Procedure 23(b)(3);

(2) A declaration that the Bank's systematic and standard policy of furnishing application materials that make disclosures of account terms to customers in a condensed fine print violates the Truth in Lending Act;

(3) An injunction permanently prohibiting the Bank from engaging in the conduct described;

(4) Maximum statutory damages as provided under 15 U.S.C. § 1640(a)(2);

(5) Attorney fees, litigation expenses, and costs; and

(6) Such other and further relief as to this Court may seem just and proper.


Jury Demand

Plaintiff respectfully requests a trial by jury.

Dated: New York, New York
July 31, 2014

Respectfully Submitted,

By:


Brian L. Bromberg
One of Plaintiff's Attorneys

Attorneys for Plaintiff

Brian L. Bromberg
Jonathan R. Miller
Bromberg Law Office, P.C.
26 Broadway, 21st Floor
New York, NY 10004
(212) 248-7906

Harley J. Schnall
Law Office of Harley J. Schnall
711 West End Avenue
New York, NY 10025
(212) 678-6546

Exhibit A

EARN MILES ON EVERY PURCHASE, EVERY DAY

0012605028499400 002 002
Abigail B. Strubel
Apt. 3B
49 W. 85th St.
New York, NY 10024-4116

A6AI



Abigail,

Your credit card should work hard for you. I'd like to offer you this VentureOne® card. Once approved, you'll earn free trips fast and get 1.25 miles for every \$1 you spend on purchases—**that's more miles than those single-mile cards.** Plus, enjoy no annual fee.

Redeem your miles for any travel expense, such as hotel rooms, flights, or rental cars. You can fly free on any airline, anytime, with no blackout dates. Plus, VentureOne charges no foreign transaction fees.

Apply today for this personal VentureOne card with no annual fee. You'll get a one-time bonus of 10,000 miles when you spend \$1,000 on purchases within the first 3 months.

Michael Robertson

Michael Robertson
Director of Venture Rewards

Please see the enclosed Important Disclosures for rate, fee, and other cost information:

- **GET 1.25 MILES**
per \$1 on every purchase
- **EARN UNLIMITED MILES**
that don't expire
- **NO ANNUAL FEE**



Visit
application.capitalone.com

Interest Rates and Interest Charges

Annual Percentage Rate (APR) for Purchases	0% introductory APR through your 08/2014 billing period. After that, your APR will be 11.9%, 15.9% or 19.9% , based on your creditworthiness. This APR will vary with the market based on the Prime Rate.
APR for Transfers	11.9%, 15.9% or 19.9% , based on your creditworthiness. This APR will vary with the market based on the Prime Rate.
APR for Cash Advances	24.9% . This APR will vary with the market based on the Prime Rate.
Penalty APR and When It Applies	29.4% . This APR will vary with the market based on the Prime Rate. This APR may be applied to your account if you make a late payment. How Long Will the Penalty APR Apply?: If APRs are increased for a payment that is late, the Penalty APR may apply indefinitely.
Paying Interest	Your due date is at least 25 days after the close of each billing cycle. We will not charge you interest on new purchases, provided you have paid your previous balance in full by the due date each month. We will begin charging interest on cash advances and transfers on the transaction date.
Minimum Interest Charge	If you are charged interest, the charge will be no less than \$0.50.
For Credit Card Tips from the Consumer Financial Protection Bureau	To learn more about factors to consider when applying for or using a credit card, visit the website of the Consumer Financial Protection Bureau at http://www.consumerfinance.gov/learnmore .

Fees

Annual Fee	None.
Transaction Fees • Transfer • Cash Advance	None. Either \$10 or 3% of the amount of each cash advance, whichever is greater.
Penalty Fees • Late Payment • Over-The-Credit-Limit • Returned Payment	Up to \$35. None. None.

How Do You Calculate My Balance? We use a method called "average daily balance (including new purchases)." See enclosed Additional Disclosures for details.

Can I Lose My Introductory APR? We may end your introductory APR and apply the Penalty APR if you make a late payment.

What Are My Billing Rights? Information on your rights to dispute transactions and how to exercise those rights is provided in the enclosed Additional Disclosures.

Am I Eligible For This Offer? Please refer to the enclosed Additional Disclosures & Terms and Conditions.

What Should I Put For Total Annual Income? Enter your **personal** annual income from all sources (e.g., full-time, part-time or seasonal jobs, self employment, interest dividends, retirement and public assistance). Annual income is one of the factors used to assess your ability to make monthly payments on this account. It must be enough to cover payments, plus estimated living expenses and any other debt you are responsible for.

What Will My APR Be If I Transfer A Balance? Any balances that you transfer on or before September 1, 2014, will receive your Transfer APR. They will be posted to the Special Transfer segment of your account. Any balances that you transfer after that date will receive your Purchase APR and will be posted to the Purchase segment of your account unless transfer is made in connection with a future offer from us.

Can You Change My Account Terms? We can change the terms of your account as permitted by law. When required, we will send you notice before doing so.

If My Rate Is Increased To The Penalty Rate, Will It Ever Be Reviewed For A Possible Decrease? Yes. Capital One will periodically review any rate increase to your account for a possible rate decrease.

How Do You Calculate My Variable Rates? Your variable rates may change when the Prime rate changes. We calculate variable rates by adding a percentage to the Prime rate published in *The Wall Street Journal* on the 25th day of each month. If the *Journal* is not published on that day, then see the immediately preceding edition. Variable rates on the segment(s) will be updated monthly and will take effect on your next billing period: Non-Introductory Purchase APR: Prime plus 8.65%, 12.65% or 16.65%; Transfer APR: Prime plus 8.65%, 12.65% or 16.65%; Cash Advance APR: Prime plus 21.65%; Penalty APR: Prime plus 26.15%.

How Do You Determine My Credit Line? We determine your credit line based on your credit history and information you provide on your application. The minimum credit limit is \$3,000.

How Do You Determine Whether I Will Receive The Visa Signature Or Visa Platinum Card? Your credit history and application will be reviewed to determine your credit line. If you are approved for a credit line less than \$5,000, you will receive a Visa Platinum card. Some terms and benefits are not available with the Visa Platinum card. See our Complete Guide to Credit Card Benefits for Visa Platinum card benefit information.

What Are The Daily Periodic Rates Used To Calculate My Interest? The daily periodic rate for your Introductory Purchase APR is 0.00000%. Non-Introductory Purchase APR: 0.03260%, 0.04356% or 0.05452%; Transfer APR is 0.03260%, 0.04356% or 0.05452%; Cash Advance APR is 0.06822%, and Penalty APR is 0.08055%. See *How Do You Calculate My Interest Charge?* in the enclosed Additional Disclosures for more details.

How Do You Calculate My Minimum Payment? If your balance is less than \$25, your minimum payment will equal your balance. Otherwise, your minimum payment will be the greater of \$25 or 1% of your balance plus interest (periodic interest charges) and late payment fees. If your Account is 180 days past due, part of a bankruptcy proceeding or other legal charges off, the entire balance is due immediately.

Visa is a registered trademark of Visa International Service Association.

Refer to the "Additional Disclosures & Terms and Conditions" enclosed for additional important disclosures and rewards information.



GET REWARDED WITH VENTUREONE®

Get 1.25 miles per dollar spent on purchases.

Earn 10,000 bonus miles once you spend \$1,000 on purchases within the first 3 months.

REDEEM WITH EASE

- Your miles can be used for any travel expense
- Redeem your miles up to 90 days after your travel purchase
- There is no limit to the miles you can earn, and they don't expire

ENJOY PREMIUM FEATURES

- 0% intro APR until August 2014 on purchases, 11.9%–19.9% variable APR after that
- No foreign transaction fees
- No annual fee

APPLY NOW. This card is for people with excellent credit.



Visit
application.capitalone.com



For personal service, call
1-800-514-4568



Or mail your
application today

Reservation #: 001-2605-0284-99400 Access Code: 029983

▼ Please detach here and return. ▼

Your No Hassle Application

Abigail B. Strubel
Apt. 3B
49 W. 85th St.
New York, NY 10024-4116

0012605028499400 002 002

Offer Expires 09/13/13

Earn 10,000 bonus miles

NO ANNUAL FEE

Please correct name or address if necessary.

Please print clearly in black or blue ink. To avoid delays, provide all requested information.

SOCIAL SECURITY NUMBER

DATE OF BIRTH

PRIMARY PHONE NUMBER

† TOTAL ANNUAL INCOME

E-MAIL ADDRESS (for important account servicing information)

† Alimony, child support, or separate maintenance income need not be revealed if you do not choose to have it considered as a basis for repaying this loan.

EMPLOYER NAME

What is your current employment status? 26. ☐ Employed 27. ☐ Self-Employed 28. ☐ Retired 32. ☐ Student 33. ☐ Unemployed 34. ☐ Other

Would you be interested in blank checks to use for cash advances? ☐ Yes ☐ No

Do you have a checking or savings account? 1. ☐ Both 2. ☐ Checking Only 3. ☐ Savings Only 4. ☐ Neither

Do you have any investment accounts (for example, 401k and brokerage accounts)? ☐ Yes ☐ No

EMPLOYER PHONE NUMBER

Do you rent or own your home?

☐ Own ☐ Rent ☐ Other

Monthly rent/mortgage payment

What is the total balance of all your bank accounts (for example: checking/savings)?

- ☐ \$0 to \$1,000
- ☐ \$1,001 to \$5,000
- ☐ \$5,001 to \$25,000
- ☐ More than \$25,000
- ☐ Do not have such accounts

What is the value of your investment accounts (for example: 401K, brokerage accounts, etc.)?

- ☐ \$0 to \$1,000
- ☐ \$1,001 to \$10,000
- ☐ \$10,001 to \$50,000
- ☐ More than \$50,000
- ☐ Do not have such accounts

Your annual income must be greater than your annual rent/mortgage payment in order to be eligible for this offer.

I have read and agree to the Important Disclosures and Additional Disclosures & Terms and Conditions enclosed. You are authorized to check my credit and employment history.

Signature

Date

9640

Please see the enclosed Important Disclosures for rate, fee, and other cost information.

Do not scan

What do I need to know about VentureOne?

The VentureOne card offers you 1.25 miles per \$1 spent on every purchase, every day.

We're here to help. As a cardholder, you'll enjoy access to a customer care team that's available to assist at your convenience.

And, when you travel with VentureOne, there are no foreign transaction fees.

How can I redeem my miles?

Just book any part of your vacation through your preferred travel agent, website, or vendor using your VentureOne card. Then, you can redeem

miles right away, or within 90 days of your travel purchase.

Simply go online to capitalone.com, or call our Rewards Center, to pick a travel charge on your statement and apply your miles for a credit. The credit will be reflected in your account balance within 5–7 business days.

What else do I need to know about redeeming my miles?

Miles are good for any travel expense, like plane tickets, hotel rooms, cruises, car rentals, and more.

To determine how many miles you need, add 2 zeros to the cost of your travel. So, a \$210 hotel room would require 21,000 miles.

You can also redeem your miles for gift cards, merchandise, cash back, and more. Redemption rates for these options vary and are subject to change without notice.

How can I earn even more miles?

Earn 10,000 bonus miles when you spend \$1,000 on purchases within your first 3 months as a cardholder.

Plus, once you receive your card, you can rack up additional miles by adding authorized users to your account. Earn 1.25 miles for every \$1 they spend on purchases, too.

Apply for your VentureOne card today!

3 easy ways to reply.**Online****By Phone****By Mail**

If return envelope is missing, please mail your completed application to:
Capital One® • P.O. Box 30284 • Salt Lake City, UT 84130-9842

